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THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

WAYNE TSENG, ALEXANDRA OVERTON
 and ALICIA NOLEN, on behalf of themselves
 and all others similarly situated,

Plaintiffs,

v.

PEOPLECONNECT, INC., a Delaware
 Corporation,

Defendant.

Case No. 3:20-cv-09203

**SECOND AMENDED CLASS ACTION
 COMPLAINT FOR VIOLATION OF CAL.
 CIV. CODE § 3344, CAL. BUS. & PROF.
 CODE § 17200, AND CALIFORNIA
 UNJUST ENRICHMENT**

CLASS ACTION

JURY TRIAL DEMANDED

1. Plaintiffs WAYNE TSENG, ALEXANDRA OVERTON and ALICIA NOLEN, by and through their attorneys, make the following allegations on information and belief, except as to factual allegations pertaining to Plaintiffs, which are based on personal knowledge.

INTRODUCTION

2. Plaintiffs bring this class action complaint against PEOPLECONNECT, INC. (“Classmates”) for knowingly misappropriating the names, photographs, and likenesses of Plaintiffs and the class; knowingly using those names, photographs, and likenesses to advertise its products and services, including subscription memberships to the website Classmates.com;

1 and knowingly using those names, photographs, and likenesses on and in the website
2 Classmates.com, without obtaining prior consent from Plaintiffs and the class.

3 3. Classmates' business model relies on extracting personal information from
4 school yearbooks, including names, photographs, schools attended, and other biographical
5 information. Classmates aggregates the extracted information into digital records that identify
6 specific individuals by name, photograph, and other personal information, and stores the digital
7 records in a massive online database. Classmates provides free access to some of the personal
8 information in its database in order to drive users to purchase a paid product – a monthly
9 subscription to Classmates.com that retails for up to \$3 per month – and to gather registered
10 users, from whom Classmates profits by selling targeted ads.

11 4. According to the Classmates.com website, Classmates' Yearbook Collection
12 contains records copied from over 400 thousand yearbooks. While Classmates does not publish
13 figures about the total number of records in the Collection or a breakdown by state, it is likely
14 the Collection contains records corresponding to millions of Californians.

15 5. Classmates has not received consent from, given notice to, or provided
16 compensation to the millions of Californians whose names, photographs, biographical
17 information, and identities appear in its Classmates Yearbook Collection.

18 6. The names, photographs, cities of residence, schools attended, likenesses, and
19 identities contained in the Classmates Yearbook Collection uniquely identify specific
20 individuals.

21 7. Classmates knowingly uses the names, photographs, cities of residence, schools
22 attended, likenesses, and identities in its Classmates Yearbook Collection to advertise, sell, and
23 solicit the purchase of its "CM+" subscription membership, which retails for up to \$3 per
24 month.

25 8. Classmates knowingly uses the names, photographs, cities of residence, schools
26 attended, likenesses, and identities in its Classmates Yearbook Collection to advertise the free
27 version of its website, which is available to both unregistered users and registered non-paying
28 users. Classmates derives profit from the free version of its website by (1) selling targeted ads;

1 (2) driving users of the free version to purchase its paid products and services; and (3) on
2 information and belief, selling the personal information it collects from registered and
3 unregistered users to third parties.

4 9. Classmates knowingly uses the names, photographs, cities of residence, schools
5 attended, likenesses, and identities in its Classmates Yearbook Collection on and in its products
6 and services, by (1) selling access to the records to paying subscribers via its CM+ online
7 membership plan; and (2) including these records on the free version of its website that is
8 available to unregistered users and registered non-paying users, which Classmates distributes
9 for free to the public as a means of advertising its services and attracting paying subscribers.

10 10. By misappropriating and misusing millions of Californian's names,
11 photographs, and likenesses without consent, Classmates has harmed Plaintiffs and the class by
12 denying them the economic value of their likenesses, violating their legally protected rights to
13 exclusive use of their likenesses, infringing their intellectual property without compensation,
14 and disturbing their peace of mind. Classmates has also earned ill-gotten profits and been
15 unjustly enriched.

16 11. These practices, as further detailed in this complaint, violate the California right
17 to publicity as codified in Cal. Civ. Code § 3344; the California Unfair Competition Law, Cal.
18 Bus. & Prof. Code § 17200 *et seq.*; and California Unjust Enrichment law.

19 JURISDICTION AND VENUE

20 12. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d) (the
21 Class Action Fairness Act ("CAFA")), because: (A) members of the putative class are citizens
22 of a state different from at least one defendant. According to available public records,
23 defendant PeopleConnect Inc. is incorporated in Delaware and has its principal place of
24 business in Seattle, Washington. The class members are residents of California. (B) The
25 proposed class consists of at least 100 members. Classmates advertises that its Classmates
26 Yearbook Collection comprises records collected from "over 400,000 yearbooks." While
27 Classmates does not publish statistics concerning the total number of records in each yearbook,
28 or a breakdown by state, a conservative estimate would place the number of individual records

1 corresponding to Californians in the millions. And (C) the amount in controversy exceeds
2 \$5,000,000 exclusive of interest and costs. Cal. Civ. Code § 3344 provides for damages equal
3 to the greater of \$750 per violation, the actual damages suffered by Plaintiffs, or the profits
4 earned by Defendants attributable to the unauthorized use. Given millions of likely records in
5 California, the amount in controversy is well over the jurisdictional amount.

6 13. This Court has personal jurisdiction over the claims of Plaintiffs and the non-
7 named class members. Classmates maintains substantial connections to the state of California
8 and this district. Classmates maintains an office in Woodland Hills, California. Classmates
9 advertises its products and services to prospective customers in this state and district, provides
10 its products and services to existing customers in this state and district, and uses the
11 misappropriated names, photographs, likenesses, images, and identities of residents of this state
12 and district as described in this complaint.

13 14. Venue is appropriate pursuant to 28 U.S.C. § 1391(b). A substantial portion of
14 the events and conduct giving rise to the violations alleged in this complaint occurred in this
15 district. A substantial portion of the class members reside in this state and district. Named
16 Plaintiffs Lawrence Geoffrey Abraham, Alice Zhang, Wayne Tseng, and Jamaal Carney reside
17 in this district.

18 INTRADISTRICT VENUE

19 15. Venue in this Division of the Northern District is proper because a substantial
20 part of the events or omissions which give rise to the claim occurred in San Francisco County
21 and because the named Plaintiffs live in this District.

22 PARTIES

23 Defendant Classmates

24 16. Defendant PEOPLECONNECT, INC. is a Delaware corporation with its
25 headquarters in Seattle, Washington. It conducts business under the brand names
26 “Classmates.com,” “Classmates,” and other brand names associated with the various website
27 and services it owns and operates. It conducts business throughout this district, California, and
28 the United States. PeopleConnect, Inc. owns and operates the website Classmates.com.

Plaintiff Wayne Tseng

17. Plaintiff Wayne Tseng is a resident of El Sobrante, California, in Contra Costa County. Mr. Tseng is not a subscriber of any Classmates products or services and is not subject to any Terms of Service or any other agreement with Classmates.

18. Mr. Tseng has never provided consent to Classmates, written or otherwise, for the commercial use of his name, photograph, or likeness.

19. Classmates has never notified, requested consent from, or provided compensation to Mr. Tseng for its misappropriation and commercial exploitation of his name, photograph, and likeness.

20. There is no agreement to arbitrate between Mr. Tseng and Classmates or PeopleConnect. At no time has Mr. Tseng believed any agreement between himself and Classmates or PeopleConnect exists or existed.

21. Mr. Tseng hereby expressly repudiates any agreement to arbitrate that Classmates or PeopleConnect may contend exists or existed.

22. Mr. Tseng instructed his attorneys to pursue a claim against Classmates in federal court. Mr. Tseng has never authorized, and does not authorize, his attorneys to agree to arbitration on his behalf.

23. Mr. Tseng is not aware of any agreements between any of his attorneys and Classmates/PeopleConnect.

24. Mr. Tseng is not aware of any accounts on Classmates.com created by his attorneys.

25. Mr. Tseng did not instruct his attorneys to investigate the Classmates.com website. Mr. Tseng did not instruct his attorneys to register for an account or agree to a Terms of Service.

26. To confirm the presence of Mr. Tseng's photograph on Classmates.com and collect the single screenshot shown in the Complaint below, a non-attorney staff member of Turke & Strauss LLP searched for Mr. Tseng's name on the publicly available portion of the Classmates.com website. At the time she performed the search, the publicly available portion of

1 the Classmates.com website did not require agreement to any TOS. The staff member never
2 saw a TOS and did not agree to any TOS.

3 27. None of Mr. Tseng's attorneys or their staff visited any portion of the
4 Classmates.com website that requires agreement to a TOS to gather information related to his
5 claim.

6 28. All the information supporting Mr. Tseng's complaint is publicly available
7 without agreeing to any TOS. That Mr. Tseng's photograph is on Classmates.com is verifiable
8 by searching for his name on portions of the site that do not require agreeing to the TOS. The
9 advertising flow Classmates uses to promote website subscriptions is described in detail in
10 publicly available documents, including the initial Complaint filed in this case. That Classmates
11 publicly displays a version of the advertising flow that incorporates Mr. Tseng's photograph is
12 reasonably alleged on information and belief, because Classmates uses all student yearbook
13 photographs in the same way.

14 **Plaintiff Alexandra Overton**

15 29. Plaintiff Alexandra Overton is a resident of Ventura, California, in Ventura
16 County. Ms. Overton is not a subscriber of any Classmates products or services and is not
17 subject to any Terms of Service or any other agreement with Classmates.

18 30. Ms. Overton has never visited, used, or subscribed to the website
19 Classmates.com.

20 31. Ms. Overton attended Villanova Preparatory School in Ojai, California, from
21 which she graduated in 2019.

22 32. Ms. Overton's claims are functionally identical to the claims Plaintiffs Meredith
23 Callahan and Lawrence Geoffrey Abraham filed before this Court on December 18, 2020. Ms.
24 Overton is a member of the Class Ms. Callahan and Mr. Abraham alleged in their complaint.
25 *See* Dkt. 2. Accordingly, the statute of limitations was tolled for Ms. Overton at least from the
26 time Ms. Callahan and Mr. Abraham filed their Complaint. Ms. Overton's claims are therefore
27 timely.

28 33. Even if tolling did not apply, Ms. Overton's claims would still be timely because

1 she could not have discovered her claim prior to December 18, 2020.

2 34. Even if tolling did not apply, and even if the discovery rule did not apply, Ms.
3 Overton's claims would still be timely because, on information and belief, PeopleConnect first
4 uploaded her photograph to www.classmates.com less than two years prior to the date on which
5 Ms. Overton brought her claim.

6 35. Prior to filing her Complaint, Ms. Overton requested through her counsel that
7 PeopleConnect inform her when it first uploaded her photograph. PeopleConnect refused to
8 provide her this information.

9 36. Ms. Overton has never provided consent to Classmates, written or otherwise, for
10 the commercial use of her name, photograph, or identity.

11 37. Classmates has never notified, requested consent from, or provided
12 compensation to Ms. Overton for its misappropriation and commercial exploitation of her
13 name, photograph, and identity.

14 38. There is no agreement to arbitrate between Ms. Overton and PeopleConnect.
15 Ms. Overton has never visited the Classmates.com website and has never seen or agreed to any
16 PeopleConnect or Classmates Terms of Service. At no time has Ms. Overton believed any
17 agreement between herself and PeopleConnect exists or existed.

18 39. Counsel on behalf of Ms. Overton sent a letter to PeopleConnect's counsel on
19 February 14, 2023. **Ex. 1.** Counsel wrote that "Ms. Overton and Ms. Nolen do not agree, and
20 have never agreed, to arbitrate their claims against PeopleConnect. Ms. Overton and Ms. Nolen
21 expressly disclaim and repudiate any purported agreement to arbitrate." *Id.* The letter also
22 stated that "to ensure that PeopleConnect does not misrepresent or misunderstand Ms.
23 Overton's, Ms. Nolen's, and their counsel's unequivocal intentions **not** to enter any agreement
24 to arbitrate, Ms. Overton and Ms. Nolen both signed" Acknowledgements attached to the letter.
25 *Id.* (Emphasis in original.).

26 40. In her signed Acknowledgment attached to the February 14 letter, Ms. Overton
27 acknowledged and confirmed that: (1) she "expressly disclaims and repudiates any purported
28 agreement to arbitrate"; (2) she "has never seen or agreed to any terms of service or any other

1 agreement” with PeopleConnect; (3) she “has no knowledge of any terms, material or
2 otherwise, that might exist in any agreement to arbitrated [PeopleConnect] might have with
3 anyone”; (4) she “does not believe any agreement to arbitrate exists” between herself and
4 PeopleConnect; (5) she “does not believe [she] is bound by any agreement to arbitrate that may
5 exist between [PeopleConnect] and any other person,” including her attorneys. **Ex. 2.**

6 41. Ms. Overton also acknowledged and confirmed that she “instructed her
7 [counsel]”: (1) “[n]ot to enter any agreement to arbitrate with PeopleConnect on [her] behalf”;
8 (2) [t]o pursue this action in federal or state court and not in an arbitral forum”; (3) “[t]o inform
9 [PeopleConnect] on [her] behalf that [she] does not affirm or ratify any agreement to arbitrate
10 that might exist now, that might exist in the future, or that [PeopleConnect] might claim exists
11 or existed”; and (4) “[t]o inform [PeopleConnect] on [her] behalf that [she] expressly
12 disaffirms, disavows, and repudiates any agreement to arbitrate that might exist now, that might
13 exist in the future, or that [PeopleConnect] might claim exists or existed.” *Id.*

14 42. Ms. Overton hereby again disaffirms, disavows, and repudiates any agreement
15 to arbitrate.

16 43. None of the allegations in this Complaint relating to PeopleConnect’s use of Ms.
17 Overton’s name and photograph to advertise are based on any information gathered from
18 www.classmates.com. Rather, Ms. Overton’s allegations are based on the fact that
19 PeopleConnect incorporates each of the yearbook photographs in its database into
20 advertisements for website subscriptions in the same way. Descriptions of PeopleConnect’s
21 advertising techniques and the relevant functioning of its website appear in public filings
22 available to Ms. Overton, including the prior complaints filed in this case.

23 44. Ms. Overton highly values her personal privacy and intellectual property. She
24 highly values the ability to control and prevent the commercial use of her identity without
25 consent.

26 45. PeopleConnect uses Ms. Overton’s yearbook photograph as a minor child in
27 advertisements promoting website subscriptions. PeopleConnect possesses at least one
28 photograph of Ms. Overton it uses for this purpose, which it appropriated without her

1 permission from his yearbook from Villanova Preparatory School.

2 46. 44. PeopleConnect incorporates Ms. Overton's photograph in advertisements
3 for website subscriptions as described below. This allegation, and the succeeding allegations
4 related to PeopleConnect's use of Ms. Overton's photographs, are not based on direct
5 observation of the Classmates.com website. Rather, these allegations are based on Plaintiffs'
6 knowledge that PeopleConnect incorporates all yearbook photographs in its database into
7 advertisements in the same way.

8 47. PeopleConnect's legal posturing in this case forced Ms. Overton to prepare her
9 Complaint without referring to any portion of the Classmates website that requires account
10 creation. PeopleConnect has asserted that anyone who creates an account for any reason –
11 including for the purpose of investigating a potential legal claim – has thereby expressly
12 consented to PeopleConnect's use of their name and likeness to advertise. PeopleConnect has
13 also asserted that any attorney or other agent who creates an account to investigate someone
14 else's potential legal claim has also thereby expressly consented to PeopleConnect's use of
15 their client's name and likeness on that client's behalf. As a result, according to PeopleConnect,
16 neither Ms. Overton nor her counsel can visit any portion of the website that requires
17 agreement to the Terms without thereby sacrificing Ms. Overton's right to sue.

18 48. PeopleConnect provides a publicly accessible webpage on which users may
19 search, and have searched, by name and/or location for Ms. Overton and other Class members.

20 49. Users who searched for Ms. Overton received in response a list of results, which
21 include low-resolution photographs depicting Ms. Overton as a child.

22 50. Users who clicked on Ms. Overton's photographs seeking higher-resolution
23 versions, or who attempted to view more than a proscribed number of photographs, received a
24 pop-up message asking the user to register with the site and agree to the Terms of Service. The
25 user was required to interact with the pop-up to continue viewing Ms. Overton's photographs.

26 51. After a user agreed to the Terms and registered with the site, PeopleConnect
27 displayed a screen soliciting the purchase of a paid subscription to Classmates.com.

28 52. PeopleConnect's sole purpose in using Ms. Overton's photograph, name, and

1 identity on the free version of its website is to solicit the purchase of paid subscriptions to
2 www.classmates.com.

3 53. Ms. Overton does not know how PeopleConnect obtained her photographs as a
4 child. On information and belief, it is likely PeopleConnect obtained her photographs by paying
5 a licensing fee to a third party in exchange for digitized copies of Ms. Overton's photographs and
6 the right to make commercial use of those copies.

7 54. PeopleConnect misappropriated Ms. Overton photographs without permission
8 from Ms. Overton, the photographer who took her pictures, the authors who created her
9 yearbooks, or the publishers of her yearbooks.

10 55. PeopleConnect does not hold a copyright in yearbooks from Ms. Overton's
11 school, nor does it have permission from the copyright holder the republish or distribute the
12 yearbooks or the photographs contained therein.

13 56. Ms. Overton has intellectual property and privacy interests in her photographs,
14 name, likeness, and persona recognized by California statutory and common law. She has the
15 right to exclude anyone from making commercial use of her persona without her permission.

16 57. PeopleConnect has injured Ms. Overton by taking her intellectual property
17 without compensation; by invading her privacy rights protected by statute; by unlawfully
18 profiting from its exploitation of her personal information; and by disturbing her peace of mind.

19 58. Ms. Overton is upset and disturbed by PeopleConnect's commercial use of her
20 name, photograph, and persona without her consent. Ms. Overton believes her persona is rightly
21 hers to control. Ms. Overton does not support or endorse the website www.classmates.com. She
22 finds it offensive to her dignity that PeopleConnect is using her name and photograph without
23 her permission to advertise a product of which she does not approve.

24 59. PeopleConnect's illegal use of her name and photograph has left Ms. Overton
25 worried and uncertain about her inability to control how her name and personality are used.

26 60. Ms. Overton is deeply uncomfortable in the knowledge that PeopleConnect is
27 using her name and photographs as a minor to promote a service she does not support.
28

1 61. PeopleConnect deliberately concealed its commercial use of Ms. Overton's
2 photograph from Ms. Overton. She could not have discovered PeopleConnect's illegal use of her
3 name and photograph without the assistance of her counsel.

4 62. PeopleConnect's advertisements incorporating Ms. Overton's name and likeness
5 do not solicit paid subscriptions until after the user has created an account agreed to the Terms.
6 Accordingly, Ms. Overton could not have discovered PeopleConnect's commercial use of her
7 name and photograph to advertise without creating an account on PeopleConnect and agreeing
8 to the Terms.

9 63. Even had Ms. Overton visited the public portion of the Classmates.com website
10 and discovered the low-resolution versions of her photographs, she would not have created an
11 account or agreed to the Terms.

12 64. Account registration requires that the user share their name and email address with
13 PeopleConnect. Ms. Overton did not and does not wish to share this information with
14 PeopleConnect. Ms. Overton does not want PeopleConnect to profit from or use her personal
15 information in any way. Nor does she trust that PeopleConnect would properly safeguard her
16 name and email address.

17 65. Ms. Overton's fears on this front are well-founded. This month PeopleConnect
18 admitted to a data breach in which the names and email addresses of tens of millions of its users
19 were exposed. *See* <https://www.idstrong.com/sentinel/peopleconnect-data-breach/>
20

21 66. Account registration also requires that the user agree to the Terms. Although Ms.
22 Overton has never seen any PeopleConnect Terms and does not know what they contain,
23 Plaintiffs' counsel have explained to Ms. Overton that the Terms include a number of provisions
24 designed to impede a potential plaintiff from bringing suit in court. Had Ms. Overton visited
25 www.classmates.com for the purpose of investigating a potential legal claim, she would not have
26 agreed to any restrictions on her ability to bring suit. Accordingly, she would not have agreed to
27 the Terms.

28 67. Because Ms. Overton would not have been willing to create an account on

1 www.classmates.com, she could not have learned that PeopleConnect uses her low-resolution
 2 photographs to promote subscriptions. By placing the solicitation webpage behind the page
 3 requiring account creation and agreement to the Terms, PeopleConnect concealed Ms. Overton's
 4 cause of action from Ms. Overton.

5 68. PeopleConnect also concealed Ms. Overton's cause of action from her counsel by
 6 deliberately impeding their investigation of her claim.

7 69. PeopleConnect's affirmative actions aimed at concealing Ms. Overton cause of
 8 action from her counsel include, but are not limited to: (1) deleting accounts it knew counsel
 9 were using to investigate their clients' claims; (2) refusing counsel's repeated requests that
 10 PeopleConnect provide counsel access to www.classmates.com for the purpose of investigating
 11 their clients' claims; (3) blocking counsel's email addresses from creating accounts; (4)
 12 threatening counsel with legal action should they continue to visit www.classmates.com to
 13 investigate their clients' claims; and (5) refusing to recognize counsels' valid opt-outs of the
 14 arbitration clause in PeopleConnect's Terms.

15 **Plaintiff Alicia Nolen**

16 70. Plaintiff Alicia Nolen is a resident of Tulare, California, in Tulare County. Ms.
 17 Nolen is not a subscriber of any Classmates products or services and is not subject to any Terms
 18 of Service or any other agreement with Classmates.

19 71. Ms. Nolen has never visited, used, or subscribed to the website Classmates.com.

20 72. Ms. Nolen attended Tulare Union High School in Tulare, California, from which
 21 she graduated in 2019.

22 73. Ms. Nolen's claims are functionally identical to the claims Plaintiffs Meredith
 23 Callahan and Lawrence Geoffrey Abraham filed before this Court on December 18, 2020. Ms.
 24 Overton is a member of the Class Ms. Callahan and Mr. Abraham alleged in their complaint. *See*
 25 Dkt. 2. Accordingly, the statute of limitations was tolled for Ms. Nolen at least from the time Ms.
 26 Callahan and Mr. Abraham filed their Complaint. Ms. Nolen's claims are therefore timely.

27 74. Even if tolling did not apply, Ms. Nolen's claims would still be timely because
 28 she could not have discovered her claim prior to December 18, 2020.

1 75. Even if tolling did not apply, and even if the discovery rule did not apply, Ms.
2 Nolen's claims would still be timely because, on information and belief, PeopleConnect first
3 uploaded her photograph to www.classmates.com less than two years prior to the date on which
4 Ms. Nolen brought her claim.

5 76. Prior to filing her Complaint, Ms. Nolen requested through her counsel that
6 PeopleConnect inform her when it first uploaded her photograph. PeopleConnect refused to
7 provide her this information.

8 77. Ms. Nolen has never provided consent to Classmates, written or otherwise, for the
9 commercial use of her name, photograph, or identity.

10 78. Classmates has never notified, requested consent from, or provided compensation
11 to Ms. Nolen for its misappropriation and commercial exploitation of her name, photograph, and
12 identity.

13 79. There is no agreement to arbitrate between Ms. Nolen and PeopleConnect. Ms.
14 Nolen has never visited the Classmates.com website and has never seen or agreed to any
15 PeopleConnect or Classmates Terms of Service. At no time has Ms. Nolen believed any
16 agreement between herself and PeopleConnect exists or existed.

17 80. Counsel on behalf of Ms. Nolen sent a letter to PeopleConnect's counsel on
18 February 14, 2023. **Ex. 3.** Counsel wrote that "Ms. Overton and Ms. Nolen do not agree, and
19 have never agreed, to arbitrate their claims against PeopleConnect. Ms. Overton and Ms. Nolen
20 expressly disclaim and repudiate any purported agreement to arbitrate." *Id.* The letter also stated
21 that "to ensure that PeopleConnect does not misrepresent or misunderstand Ms. Overton's, Ms.
22 Nolen's, and their counsel's unequivocal intentions **not** to enter any agreement to arbitrate, Ms.
23 Overton and Ms. Nolen both signed" Acknowledgements attached to the letter. *Id.* (Emphasis in
24 original.).

25 81. In her signed Acknowledgment attached to the February 14 letter, Ms. Nolen
26 acknowledged and confirmed that: (1) she "expressly disclaims and repudiates any purported
27 agreement to arbitrate"; (2) she "has never seen or agreed to any terms of service or any other
28 agreement" with PeopleConnect; (3) she "has no knowledge of any terms, material or otherwise,

1 that might exist in any agreement to arbitrated [PeopleConnect] might have with anyone”; (4)
 2 she “does not believe any agreement to arbitrate exists” between herself and PeopleConnect; (5)
 3 she “does not believe [she] is bound by any agreement to arbitrate that may exist between
 4 [PeopleConnect] and any other person,” including her attorneys. **Ex. 4.**

5 82. Ms. Nolen also acknowledged and confirmed that she “instructed her [counsel]”:
 6 (1) “[n]ot to enter any agreement to arbitrate with PeopleConnect on [her] behalf”; (2) [t]o
 7 pursue this action in federal or state court and not in an arbitral forum”; (3) “[t]o inform
 8 [PeopleConnect] on [her] behalf that [she] does not affirm or ratify any agreement to arbitrate
 9 that might exist now, that might exist in the future, or that [PeopleConnect] might claim exists or
 10 existed”; and (4) “[t]o inform [PeopleConnect] on [her] behalf that [she] expressly disaffirms,
 11 disavows, and repudiates any agreement to arbitrate that might exist now, that might exist in the
 12 future, or that [PeopleConnect] might claim exists or existed.” *Id.*

13 83. Ms. Nolen hereby again disaffirms, disavows, and repudiates any agreement to
 14 arbitrate.

15 84. None of the allegations in this Complaint relating to PeopleConnect’s use of Ms.
 16 Nolen’s name and photograph are based on any information gathered from
 17 www.classmates.com. Rather, Ms. Nolen’s allegations are based on the fact that PeopleConnect
 18 incorporates each of the yearbook photographs in its database into advertisements for website
 19 subscriptions in the same way. Descriptions of PeopleConnect’s advertising techniques and the
 20 relevant functioning of its website appear in public filings available to Ms. Nolen, including the
 21 prior complaints filed in this case.

22 85. Ms. Nolen highly values her personal privacy and intellectual property. She
 23 highly values the ability to control and prevent the commercial use of her identity without
 24 consent.

25 86. PeopleConnect uses Ms. Nolen’s yearbook photograph as a minor child in
 26 advertisements promoting website subscriptions. PeopleConnect possesses at least one
 27 photograph of Ms. Nolen it uses for this purpose, which it appropriated without her permission
 28 from his yearbook from Tulare Union High School.

1 87. 44. PeopleConnect incorporates Ms. Nolen's photograph in advertisements for
2 website subscriptions as described below. This allegation, and the succeeding allegations related
3 to PeopleConnect's use of Ms. Nolen's photographs, are not based on direct observation of the
4 Classmates.com website. Rather, these allegations are based on Plaintiffs' knowledge that
5 PeopleConnect incorporates all yearbook photographs in its database into advertisements in the
6 same way.

7 88. PeopleConnect's legal posturing in this case forced Ms. Nolen to prepare her
8 Complaint without referring to any portion of the Classmates website that requires account
9 creation. PeopleConnect has asserted that anyone who creates an account for any reason –
10 including for the purpose of investigating a potential legal claim – has thereby expressly
11 consented to PeopleConnect's use of their name and likeness to advertise. PeopleConnect has
12 also asserted that any attorney or other agent who creates an account to investigate someone
13 else's potential legal claim has also thereby expressly consented to PeopleConnect's use of
14 their client's name and likeness on that client's behalf. As a result, according to PeopleConnect,
15 neither Ms. Nolen nor her counsel can visit any portion of the website that requires agreement
16 to the Terms without thereby sacrificing Ms. Nolen's right to sue.

17 89. PeopleConnect provides a publicly accessible webpage on which users may
18 search, and have searched, by name and/or location for Ms. Nolen and other Class members.

19 90. Users who searched for Ms. Nolen received in response a list of results, which
20 include low-resolution photographs depicting Ms. Nolen as a child.

21 91. Users who clicked on Ms. Nolen's photographs seeking higher-resolution versions,
22 or who attempted to view more than a proscribed number of photographs, received a pop-up
23 message asking the user to register with the site and agree to the Terms of Service. The user was
24 required to interact with the pop-up to continue viewing Ms. Nolen's photographs.

25 92. After a user agreed to the Terms and registered with the site, PeopleConnect
26 displayed a screen soliciting the purchase of a paid subscription to Classmates.com.

27 93. PeopleConnect's sole purpose in using Ms. Nolen's photograph, name, and identity
28 on the free version of its website is to solicit the purchase of paid subscriptions to

1 www.classmates.com.

2 94. Ms. Nolen does not know how PeopleConnect obtained her photographs as a child.
3 On information and belief, it is likely PeopleConnect obtained her photographs by paying a
4 licensing fee to a third party in exchange for digitized copies of Ms. Nolen's photographs and the
5 right to make commercial use of those copies.

6 95. PeopleConnect misappropriated Ms. Nolen photographs without permission from
7 Ms. Nolen, the photographer who took her pictures, the authors who created her yearbooks, or the
8 publishers of her yearbooks.

9 96. PeopleConnect does not hold a copyright in yearbooks from Ms. Nolen's school,
10 nor does it have permission from the copyright holder the republish or distribute the yearbooks or
11 the photographs contained therein.

12 97. Ms. Nolen has intellectual property and privacy interests in her photographs, name,
13 likeness, and persona recognized by California statutory and common law. She has the right to
14 exclude anyone from making commercial use of her persona without her permission.

15 98. PeopleConnect has injured Ms. Nolen by taking her intellectual property without
16 compensation; by invading her privacy rights protected by statute; by unlawfully profiting from
17 its exploitation of her personal information; and by disturbing her peace of mind.

18 99. Ms. Nolen is upset and disturbed by PeopleConnect's commercial use of her name,
19 photograph, and persona without her consent. Ms. Nolen believes her persona is rightly hers to
20 control. Ms. Nolen does not support or endorse the website www.classmates.com. She finds it
21 offensive to her dignity that PeopleConnect is using her name and photograph without her
22 permission to advertise a product of which she does not approve.

23 100. PeopleConnect's illegal use of her name and photograph has left Ms. Nolen worried
24 and uncertain about her inability to control how her name and personality are used.

25 101. Ms. Nolen is deeply uncomfortable in the knowledge that PeopleConnect is using
26 her name and photographs as a minor to promote a service she does not support.

27 102. PeopleConnect deliberately concealed its commercial use of Ms. Nolen's
28

1 photograph from Ms. Nolen. She could not have discovered PeopleConnect's illegal use of her
2 name and photograph without the assistance of her counsel.

3 103. PeopleConnect's advertisements incorporating Ms. Nolen's name and likeness do
4 not solicit paid subscriptions until after the user has created an account agreed to the Terms.
5 Accordingly, Ms. Nolen could not have discovered PeopleConnect's commercial use of her name
6 and photograph to advertise without creating an account on PeopleConnect and agreeing to the
7 Terms.

8 104. Even had Ms. Nolen visited the public portion of the Classmates.com website and
9 discovered the low-resolution versions of her photographs, she would not have created an account
10 or agreed to the Terms.

11 105. Account registration requires that the user share their name and email address with
12 PeopleConnect. Ms. Nolen did not and does not wish to share this information with
13 PeopleConnect. Ms. Nolen does not want PeopleConnect to profit from or use her personal
14 information in any way. Nor does she trust that PeopleConnect would properly safeguard her name
15 and email address.

16 106. Ms. Nolen's fears on this front are well-founded. This month PeopleConnect
17 admitted to a data breach in which the names and email addresses of tens of millions of its users
18 were exposed. *See* <https://www.idstrong.com/sentinel/peopleconnect-data-breach/>
19

20 107. Account registration also requires that the user agree to the Terms. Although Ms.
21 Nolen has never seen any PeopleConnect Terms and does not know what they contain, Plaintiffs'
22 counsel have explained to Ms. Nolen that the Terms include a number of provisions designed to
23 impede a potential plaintiff from bringing suit in court. Had Ms. Nolen visited
24 www.classmates.com for the purpose of investigating a potential legal claim, she would not have
25 agreed to any restrictions on her ability to bring suit. Accordingly, she would not have agreed to
26 the Terms.

27 108. Because Ms. Nolen would not have been willing to create an account on
28 www.classmates.com, she could not have learned that PeopleConnect uses her low-resolution

1 photographs to promote subscriptions. By placing the solicitation webpage behind the page
 2 requiring account creation and agreement to the Terms, PeopleConnect concealed Ms. Nolen's
 3 cause of action from Ms. Nolen.

4 109. PeopleConnect also concealed Ms. Nolen's cause of action from her counsel by
 5 deliberately impeding their investigation of her claim.

6 110. PeopleConnect's affirmative actions aimed at concealing Ms. Nolen's cause of
 7 action from her counsel include, but are not limited to: (1) deleting accounts it knew counsel
 8 were using to investigate their clients' claims; (2) refusing counsel's repeated requests that
 9 PeopleConnect provide counsel access to www.classmates.com for the purpose of investigating
 10 their clients' claims; (3) blocking counsel's email addresses from creating accounts; (4)
 11 threatening counsel with legal action should they continue to visit www.classmates.com to
 12 investigate their clients' claims; and (5) refusing to recognize counsels' valid opt-outs of the
 13 arbitration clause in PeopleConnect's Terms.

14 **NAMED PLAINTIFFS' FACTUAL ALLEGATIONS**

15 **Plaintiff Wayne Tseng**

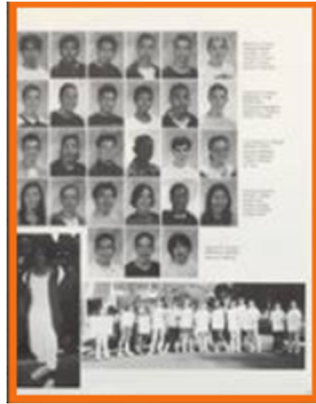
16 111. Plaintiff Wayne Tseng is a private individual who has no relationship with
 17 Classmates or PeopleConnect. He has never visited, used, or subscribed to Classmates.com.

18 112. Mr. Tseng did not give consent to Classmates to use his photographs, likeness,
 19 name, or persona in any way. Had Classmates requested his consent, Mr. Tseng would not have
 20 provided it.

21 113. Mr. Tseng highly values his personal privacy and his ability to control and
 22 prevent the commercial use of his likeness without his consent.

23 114. Classmates uses Mr. Tseng's yearbook photograph as a minor child in
 24 advertisements promoting website subscriptions. Classmates possesses at least one photograph of
 25 Mr. Tseng it uses for this purpose, which it misappropriated without his permission from Mr.
 26 Tseng's yearbook from Albany High School in Albany, California.
 27
 28

115. A screenshot taken from Classmates.com showing the yearbook page from which Classmates extracted Mr. Tseng's photograph appears below. For Mr. Tseng's privacy and the privacy of others displayed, counsel present the screenshot here in a low-resolution format. As it appears on the Classmates website, Mr. Tseng's name and likeness are plainly visible and identifiable. The screenshot shown below was collected by a staff member at Turke & Strauss from a part of the Classmates.com website that does not require assent to the TOS to access. The staff member did not see a TOS and did not agree to a TOS.



116. Classmates provides a publicly accessible landing page on which non-registered users may search, and have searched, for Mr. Tseng by name and location.

117. Users who search for Mr. Tseng receive in response a list of results, which include a low-resolution version of the photograph depicting Mr. Tseng as a minor.

118. Users who click on Mr. Tseng's photograph seeking a high-resolution version receive a pop-up message asking the user to register with Classmates.com "to view full-size yearbooks." The user must interact with the pop-up to continue viewing Mr. Tseng's photograph.

119. Once users have clicked "Submit" on the pop-up, Classmates displays a screen soliciting the purchase of a paid subscription to Classmates.com.

120. Classmates also displays banner ads promoting Classmates.com subscriptions adjacent to the search results containing Mr. Tseng's photograph.

121. As shown above, Classmates' uses Mr. Tseng's photograph, name, and likeness in advertisements it displays publicly on the Internet for the commercial purpose of soliciting

1 subscriptions.

2 122. Mr. Tseng does not know how Classmates obtained his name and photograph as a
3 child. It appears to have been misappropriated from his high school yearbook.

4 123. On information and belief, Classmates received no indication, and had no
5 reasonable belief, that the people who created Mr. Tseng's yearbook intended the yearbook to be
6 published on the Internet or used to promote website subscriptions.

7 124. On information and belief, Classmates did not obtain permission from the
8 yearbooks' authors, the photographer who took Mr. Tseng's photograph, or the yearbook's
9 copyright holder prior to incorporating Mr. Tseng's photograph and other photographs from the
10 yearbook in its advertisements. On information and belief, Classmates does not hold the
11 copyright in Mr. Tseng's yearbook or his photograph.

12 125. Mr. Tseng has intellectual property and privacy interests in his name, likeness,
13 and persona recognized by California statutory and common law. He has the right to exclude
14 anyone from making commercial use of his likeness without his consent.

15 126. Classmates has injured Mr. Tseng by profiting from its use of his name and
16 likeness without compensating him; by misappropriating and infringing his intellectual property
17 rights without compensation; by violating his statutorily protected right to control the
18 commercial use of his name and likeness; and by disturbing his peace of mind.

19 127. Classmates' illegal actions caused Mr. Tseng mental anguish and harmed his
20 peace of mind. Upon learning about Classmates' actions, Mr. Tseng was upset and disturbed by
21 Classmates' use of his name and photograph without his consent. Mr. Tseng believes his likeness
22 is rightly his to control. Classmates' illegal use has left him worried and uncertain about his
23 inability to control how his name and likeness is used. Mr. Tseng feels that Classmates' use of
24 his photograph represents an alarming invasion of his privacy. Mr. Tseng feels deeply
25 uncomfortable in the knowledge that Classmates is using his name and likeness to advertise a
26 subscription product he does not endorse or approve of.

27 **Plaintiff Alexandra Overton**

28 128. Plaintiff Alexandra Overton is a private individual who has no relationship with

1 Classmates or PeopleConnect. She has never visited, used, or subscribed to Classmates.com.

2 129. Ms. Overton did not give consent to Classmates to use her photographs, likeness,
3 name, or persona in any way. Had Classmates requested her consent, Ms. Overton would not
4 have provided it.

5 130. Ms. Overton highly values her personal privacy and her ability to control and
6 prevent the commercial use of her likeness without her consent.

7 131. Classmates uses Ms. Overton's yearbook photograph as a minor child in
8 advertisements promoting website subscriptions. Classmates possesses at least one photograph of
9 Ms. Overton it uses for this purpose, which it misappropriated without her permission from Ms.
10 Overton's yearbook from Villanova Preparatory School in Ojai, California.

11 132. Ms. Overton is not able to include a screenshot showing the yearbook page from
12 which Classmates extracted her photograph because, at some point after Ms. Overton informed
13 Classmates of her claim and before her counsel prepared this Complaint, it appears Classmates
14 removed her yearbook from its website. Counsel anticipate discovery will reveal Classmates did
15 so for the express purpose of preventing Ms. Overton from investigating her claim and preparing
16 her Complaint.

17 133. Classmates provides a publicly accessible landing page on which non-registered
18 users may search, and have searched, for Ms. Overton by name and location.

19 134. Users who search for Ms. Overton receive in response a list of results, which
20 include a low-resolution version of the photograph depicting Ms. Overton as a minor.

21 135. Users who click on Ms. Overton's photograph seeking a high-resolution version
22 receive a pop-up message asking the user to register with Classmates.com "to view full-size
23 yearbooks." The user must interact with the pop-up to continue viewing Ms. Overton's
24 photograph.

25 136. Once users have clicked "Submit" on the pop-up, Classmates displays a screen
26 soliciting the purchase of a paid subscription to Classmates.com.

27 137. Classmates also displays banner ads promoting Classmates.com subscriptions
28 adjacent to the search results containing Ms. Overton's photograph.

1 138. As shown above, Classmates' uses Ms. Overton's photograph, name, and likeness
2 in advertisements it displays publicly on the Internet for the commercial purpose of soliciting
3 subscriptions.

4 139. Ms. Overton does not know how Classmates obtained her name and photograph
5 as a child. It appears to have been misappropriated from her high school yearbook.

6 140. On information and belief, Classmates received no indication, and had no
7 reasonable belief, that the people who created Ms. Overton's yearbook intended the yearbook to
8 be published on the Internet or used to promote website subscriptions.

9 141. On information and belief, Classmates did not obtain permission from the
10 yearbooks' authors, the photographer who took Ms. Overton's photograph, or the yearbook's
11 copyright holder prior to incorporating Ms. Overton's photograph and other photographs from
12 the yearbook in its advertisements. On information and belief, Classmates does not hold the
13 copyright in Ms. Overton's yearbook or her photograph.

14 142. Ms. Overton has intellectual property and privacy interests in her name, likeness,
15 and persona recognized by California statutory and common law. She has the right to exclude
16 anyone from making commercial use of his likeness without his consent.

17 143. Classmates has injured Ms. Overton by profiting from its use of her name and
18 likeness without compensating her; by misappropriating and infringing her intellectual property
19 rights without compensation; by violating her statutorily protected right to control the
20 commercial use of her name and likeness; and by disturbing her peace of mind.

21 144. Classmates' illegal actions caused Ms. Overton mental anguish and harmed her
22 peace of mind. Upon learning about Classmates' actions, Ms. Overton was upset and disturbed
23 by Classmates' use of her name and photograph without her consent. Ms. Overton believes her
24 likeness is rightly hers to control. Classmates' illegal use has left her worried and uncertain about
25 her inability to control how her name and likeness is used. Ms. Overton feels that Classmates'
26 use of his photograph represents an alarming invasion of her privacy. Ms. Overton feels deeply
27 uncomfortable in the knowledge that Classmates is using her name and likeness to advertise a
28 subscription product she does not endorse or approve of.

Plaintiff Alicia Nolen

145. Plaintiff Alicia Nolen is a private individual who has no relationship with Classmates or PeopleConnect. She has never visited, used, or subscribed to Classmates.com.

146. Ms. Nolen did not give consent to Classmates to use her photographs, likeness, name, or persona in any way. Had Classmates requested her consent, Ms. Nolen would not have provided it.

147. Ms. Nolen highly values her personal privacy and her ability to control and prevent the commercial use of her likeness without her consent.

148. Classmates uses Ms. Nolen's yearbook photograph as a minor child in advertisements promoting website subscriptions. Classmates possesses at least one photograph of Ms. Nolen it uses for this purpose, which it misappropriated without her permission from Ms. Nolen's yearbook from Tulare Union High School in Tulare, California.

149. A screenshot taken from Classmates.com showing the yearbook page from which Classmates extracted Ms. Nolen's photograph appears below. For Ms. Nolen's privacy and the privacy of others displayed, counsel present the screenshot here in a low-resolution format. As it appears on the Classmates website, Ms. Nolen's name and likeness are plainly visible and identifiable. The screenshot shown below was collected by a staff member at Turke & Strauss from a part of the Classmates.com website that does not require assent to the TOS to access. The staff member did not see a TOS and did not agree to a TOS.



150. Classmates provides a publicly accessible landing page on which non-registered users may search, and have searched, for Ms. Nolen by name and location.

1 151. Users who search for Ms. Nolen receive in response a list of results, which
2 include a low-resolution version of the photograph depicting Ms. Nolen as a minor.

3 152. Users who click on Ms. Nolen 's photograph seeking a high-resolution version
4 receive a pop-up message asking the user to register with Classmates.com “to view full-size
5 yearbooks.” The user must interact with the pop-up to continue viewing Ms. Nolen’s photograph.

6 153. Once users have clicked “Submit” on the pop-up, Classmates displays a screen
7 soliciting the purchase of a paid subscription to Classmates.com.

8 154. Classmates also displays banner ads promoting Classmates.com subscriptions
9 adjacent to the search results containing Ms. Nolen’s photograph.

10 155. Classmates uses Ms. Nolen’s photograph, name, and likeness in advertisements it
11 displays publicly on the Internet for the commercial purpose of soliciting subscriptions.

12 156. Ms. Nolen does not know how Classmates obtained her name and photograph as a
13 child. It appears to have been misappropriated from her high school yearbook.

14 157. On information and belief, Classmates received no indication, and had no
15 reasonable belief, that the people who created Ms. Nolen’s yearbook intended the yearbook to be
16 published on the Internet or used to promote website subscriptions.

17 158. On information and belief, Classmates did not obtain permission from the
18 yearbooks’ authors, the photographer who took Ms. Nolen’s photograph, or the yearbook’s
19 copyright holder prior to incorporating Ms. Nolen’s photograph and other photographs from the
20 yearbook in its advertisements. On information and belief, Classmates does not hold the
21 copyright in Ms. Nolen’s yearbook or her photograph.

22 159. Ms. Nolen has intellectual property and privacy interests in her name, likeness,
23 and persona recognized by California statutory and common law. She has the right to exclude
24 anyone from making commercial use of his likeness without his consent.

25 160. Classmates has injured Ms. Nolen by profiting from its use of her name and
26 likeness without compensating her; by misappropriating and infringing her intellectual property
27 rights without compensation; by violating her statutorily protected right to control the
28 commercial use of her name and likeness; and by disturbing her peace of mind.

1 Classmates profits by selling targeted advertisements and driving users to its paid products and
2 subscriptions.

3 167. Classmates employs a variety of advertising techniques through which it exploits
4 the names, photographs, and likenesses of Plaintiffs and the class, many of which are detailed in
5 the Plaintiff-specific portion of this complaint. Across all of the advertising techniques it uses,
6 Classmates seeks to translate its users' interest in seeing pictures of and learning personal details
7 about Plaintiffs and the class, into the purchase of a Classmates product or service (or the use of
8 a website from which Classmates drives profit).

9 168. Classmates knowingly uses the names, photographs, and likenesses of Plaintiffs
10 and the Class on and in its products and services by including the records it has created about
11 Plaintiffs and the Class on its website.

12 169. On information and belief, Classmates makes no attempt to contact or gain the
13 consent of the people whose names, photographs, likenesses, biographical information, and
14 identities it uses to advertise website subscriptions.

15 170. On information and belief, Classmates has received no indication that the authors,
16 publishers, or copyright holders of the yearbooks in its database intended the yearbooks to be
17 published on the Internet or used to promote paid subscriptions.

18 171. The vast majority of people whose personal information Classmates has digitally
19 extracted and aggregated in its Classmates Yearbook Collection have no business relationship
20 with Classmates, are not Classmates subscribers, and are not subject to a Terms of Service or any
21 other agreement with Classmates.

22 172. Through its actions, Classmates has caused harm to Plaintiffs and the Class by
23 depriving them the fair economic value of their likenesses; violating their exclusive rights to
24 control their likenesses; infringing their intellectual property without compensation; and
25 disturbing their peace of mind. Classmates has earned ill-gotten profits and been unjustly
26 enriched through its use of the names, photographs, and likenesses of Plaintiffs and the class.

27 173. Classmates knowing misappropriation of names, likenesses, photographs, and
28 other personal information, and use of those names, likenesses, photographs, and other personal

information in selling and advertising its products and services, violates California's Right of Publicity statute, Cal. Civ. Code § 3344; the California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq.*; and California Unjust Enrichment law.

CLASS ALLEGATIONS

174. Plaintiffs bring this complaint on behalf of themselves and a Class of all California residents who (a) are not currently subscribers of any Classmates services, (b) have never donated a yearbook to Classmates, and (c) whose names, photographs, and/or likenesses were extracted from yearbooks by Classmates and placed on the Classmates website as part of its Yearbook Collection, without Classmates obtaining their consent. Excluded from the class are (a) Plaintiffs' counsel; (b) Classmates, its officers and directors, counsel, successors and assigns; (c) any entity in which Classmates has a controlling interest; and (d) the judge to whom this case is assigned and the judge's immediate family.

175. The members of the proposed class are so numerous that joinder of individual claims is impracticable. Classmates represents that its Yearbook Collection contains records from over 400,000 yearbooks in the United States. Each yearbook contains the names and likeness of hundreds, sometimes thousands of individuals. Even accounting for the fact that only a portion of the yearbooks are from California, that some individuals in Classmates' database are deceased or no longer reside in California, and that the class excludes current Classmates subscribers (Classmates has about 4 million subscribers worldwide), the class likely numbers in the millions.

176. There are significant questions of fact and law common to the members of the class. These issues include:

- a. Whether Classmates' extraction and aggregation of personal information about Plaintiffs and the class members, including names, yearbook photographs, yearbook years, cities of residence, schools attended, and interest and hobbies, in its Classmates Yearbook Collection, and selling of that information via paid subscription plans, constitute the knowing use of another's name, photograph, or likeness, in any manner, on or in products, merchandise or goods within the

1 meaning of Cal. Civ. Code § 3344;

2 b. Whether Classmates' extraction and aggregation of personal information about
 3 Plaintiffs and the class members, including names, yearbook photographs,
 4 yearbook years, cities of residence, schools attended, and interests and hobbies,
 5 and use of that information in the advertising techniques described in this
 6 complaint, constitutes the knowing use of another's name, photograph, or
 7 likeness for purposes of advertising or selling, or soliciting purchases of
 8 products, merchandise, goods or services, within the meaning of Cal. Civ. Code
 9 § 3344;

10 c. Whether Plaintiffs and the class consented to the use of their names,
 11 photographs, and likenesses in Classmates products and advertisements;

12 d. Whether Classmates' use of names, photographs, and likeness constitutes a use
 13 in connection with news or public affairs for which consent is not required;

14 e. Whether Classmates' conduct as described in this complaint violated
 15 California's Unfair Competition Law;

16 f. Whether Classmates was unjustly enriched as a result of the conduct described
 17 in this complaint; and

18 g. Whether Plaintiffs and members of the class are entitled to injunctive,
 19 declaratory and monetary relief as a result of Classmates' conduct as described
 20 in this complaint.

21 177. Plaintiffs' claims are typical of those of the proposed class. Plaintiffs and all
 22 members of the proposed class have been harmed by Classmates misappropriation and misuse of
 23 their names, likenesses, photographs, and other personal information.

24 178. The proposed class representatives will fairly and adequately represent the
 25 proposed class. The class representatives' claims are co-extensive with those of the rest of the
 26 class, and they are represented by qualified counsel experienced in class action litigation of this
 27 nature.

28 179. A class action is superior to other available methods for the fair and efficient

1 adjudication of these claims because individual joinder of the claims of all members of the
 2 proposed class is impracticable. Many members of the class do not have the financial resources
 3 necessary to pursue this claim, and even if they did, the size of their interest in the case may not
 4 be large enough to merit the cost of pursuing the case. Individual litigation of these claims would
 5 be unduly burdensome on the courts in which individualized cases would proceed. Individual
 6 litigation would greatly increase the time and expense needed to resolve a dispute concerning
 7 Classmates' common actions towards an entire group. Class action procedures allow for the
 8 benefits of unitary adjudication, economy of scale, and comprehensive supervision of the
 9 controversy by a single court.

10 180. The proposed class action may be certified pursuant to Rule 23(b)(2) of the
 11 Federal Rules of Civil Procedure. Classmates has acted on ground generally applicable to the
 12 proposed class, such that final injunctive and declaratory relief is appropriate with respect to the
 13 class as a whole.

14 181. The proposed class action may be certified pursuant to Rule 23(b)(3). Questions
 15 of law and fact common to class members predominate over questions affecting individual
 16 members, and a class action is superior to other available methods for fairly and efficiency
 17 adjudicating the controversy.

18 **FIRST CAUSE OF ACTION**
 19 **(Cal. Civ. Code § 3344)**

20 182. Plaintiffs incorporate by reference the allegations contained in all preceding
 21 paragraphs of this complaint.

22 183. California's Right of Publicity Statute, California Civil Code § 3344, prohibits
 23 and provides damages for the knowing misappropriation of a name, voice, signature, photograph,
 24 or likeness in advertising or soliciting without prior consent.

25 184. By engaging in the forgoing acts and omissions, Classmates knowingly used class
 26 members' names, photographs, and likenesses in its products and services for the purpose of
 27 advertising and selling its services, without class members' consent.

28 185. Each use of a class member's name, photograph, or likeness is a separate and

1 distinct violation of California Civil Code § 3344 giving rise to damages.

2 186. Plaintiffs seek declaratory, injunctive, and monetary damages for themselves and
3 on behalf of each member of the proposed class as provided for in California Civil Code § 3344,
4 including statutory damages equal to the greater of \$750 per violation, actual damages, or profits
5 from Classmates' illegal actions, punitive damages, and the award of attorneys' fees and costs in
6 the event Plaintiffs prevail in this action.

7 187. Defendants, and each of them, have been guilty of oppression, fraud, and/or
8 malice and despicable conduct warranting an award of exemplary and/or punitive damages under
9 the provisions of Cal. Civ. Code § 3294. The foregoing conduct has been approved, authorized
10 and/or ratified by each Defendants' officers, directors and/or managing agents as required by the
11 provisions section 3294.

12
13 **SECOND CAUSE OF ACTION**
14 **(Cal. Bus. & Prof. Code § 17200 *et seq.*)**

15 188. Plaintiffs incorporate by reference the allegations contained in all preceding
16 paragraphs of this complaint.

17 189. Classmates has and is engaged in unfair competition, as that term is defined in the
18 California Unfair Competition Law, Cal. Bus. & Prof. Code. § 17200 *et seq.* ("UCL").

19 190. As described in this complaint, Classmates' misappropriation and use without
20 consent of Plaintiffs' and class members' names, photographs, likenesses, and personal
21 information is a violation of California's Right to Publicity Statute, Cal. Civ. Code § 3344.

22 191. By engaging in the conduct described in this complaint and violating California
23 law, Classmates engaged in and continues to engage in "unlawful" business acts and practices
24 prohibited by the UCL.

25 192. As a result of Classmates' actions, Plaintiffs and the class have been injured.
26 Plaintiffs and members of the class each lost the economic value of their likenesses, their
27 exclusive right to control their likenesses, their right to the value of their intellectual property,
28 and their right to freedom from intrusion on their peace of mind. Plaintiffs and members of the

1 class also lost the right to refuse consent and protect their privacy, as guaranteed by California
2 law.

3 **THIRD CAUSE OF ACTION**
4 **(Unjust Enrichment)**

5 193. Plaintiffs incorporate by reference the allegations contained in all preceding
6 paragraphs of this complaint.

7 194. Plaintiffs and members of the class have conferred an unwarranted benefit on
8 Classmates. Classmates' business model centers around using personal information that
9 rightfully belongs to Plaintiffs and members of the class to sell its products and services.
10 Classmates uses the personal information it misappropriated without consent. Each "CM+"
11 subscription sold to users who then gain access to records that rightfully belong to class
12 members, and all advertising revenue collected from the delivery of ads on pages displaying
13 records that rightfully belong to class members, represents an unwarranted benefit conferred
14 upon Classmates by the class.

15 195. Under principles of equity and good conscience, Classmates should not be
16 permitted to retain the benefits it gained by its actions.

17 196. Plaintiffs and members of the class have suffered loss as a direct result of
18 Classmates' conduct.

19 197. Among other remedies, Plaintiffs, on their own behalf and on behalf of absent
20 class members, seek the imposition of a constructive trust and restitution of proceeds Classmates
21 received as a result of the conduct described in this complaint, as well as an award of attorneys'
22 fees, costs, and interest pursuant to Cal. Civ. Proc. Code § 1021.5.

23 **PRAYER FOR RELIEF**

24 198. WHEREFORE Plaintiffs, on behalf of themselves and all others similarly
25 situation, hereby demand judgment against Defendant Classmates as follows:

26 (a) For an order certifying the proposed class and appointing Plaintiffs and their
27 counsel to represent the class;

28 (b) For a declaration that Classmates' acts and omissions constitute a knowing

misappropriation of names, likeness, photographs, and other personal information, and infringe on protected privacy rights, in violation of California law;

- (c) For preliminary and permanent injunctive relief enjoining and preventing Classmates from continuing to operate its Classmates website and expand its databases without appropriate safeguards to ensure people's personal information is not used illegally without their consent;
- (d) For an order enjoining Classmates from continuing the unlawful and unfair conduct described in this complaint;
- (e) For restitution for Plaintiffs and members the class for the value that Defendants derived from misappropriating their likenesses;
- (f) For an award of damages, including without limitation damages for actual harm, profits earned by Classmates, and statutory damages;
- (g) For an award of reasonable attorneys' fees and costs incurred by Plaintiffs and the class members; and
- (h) For an award of other relief in law and equity to which Plaintiffs and the class members may be entitled.

JURY TRIAL DEMAND

Plaintiffs hereby demand a jury trial for all individual and Class claims so triable.

Dated: March 23, 2023

By: /s/ Raina C. Borrelli
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CERTIFICATE OF SERVICE

I, Raina C. Borrelli, hereby certify that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to counsel of record via the ECF system.

DATED this 23rd day of March, 2023.

By: /s/ Raina C. Borrelli
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